IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5019 OF 1997

Suresh P. Kumbhar..... .... Petitioner
V/s
The Shikshan Prasarak Mandal, Bhag Pusesavali,
Talu. Khatav, & Ors..... ....
Respondents.

Mr.Dilip Bodake, Adv. for the petitioner.

Mr.S.K.Chincholikar, AGP for respondent No.3.

Mr.T.S.Ingle, Adv. For respondent No.4.

CORAM: A.P. DESHPANDE, J.
16.6.2007

ORAL JUDGMENT:

The petitioner has challenged a judgment and order passed by the School Tribunal dated 18.9.97 dismissing the appeal filed by the present petitioner calling in question the legality and validity of his termination.

2. Respondent No.1 is a Society and Public Trust which administers and manages a school by name Mahatma Gandhi Vidyalaya and Junior College. The school management issued an advertisement in the local daily on 16.5.1993 inviting applications for filling in various posts. One of the post in the said advertisement was for the subject of English and the requisite qualification prescribed was M.A., B.Ed. The said post was reserved for a candidate belonging to schedule tribe category. The advertisement further clarified that if in case a candidate belonging to a particular category is not

available for which the post has been reserved a candidate from any other backward class would be considered. The petitioner belongs to Hindu Kumbhar caste which is included in OBC category of the backward class, for which also reservation has been prescribed under Rule 9 sub-rule (7) of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules. The petitioner pursuant to the said advertisement applied for the post of lecturer in English. As no schedule tribe category candidate was available the claim of the petitioner was considered and the petitioner came to be appointed in the junior college as lecturer in the subject of English vide appointment order dated 25.6.93 with effect from 1.7.1993. The appointment order categorically mentions that the petitioner's appointment is on probation for a period of two years. The said appointment of the petitioner made on probation for a period of two years was duly approved by the Deputy Director of Education, Kolhapur and the approval chart for academic session 1993-94 finds place on page 28. The Deputy Director has granted approval to petitioner in the pay scale of Rs.2000-3500 as calculated from 2.7.1993 for a period of two years on probation. The petitioner successfully completed the term of probation and the management again sought approval to the appointment of petitioner in the next academic session 1994-95. Again in the said academic session the petitioner's appointment was approved for a period of two years on probation. The petitioner successfully completed the probation period.

3. The present respondent No.4 was working as assistant teacher in the secondary school of respondent No.1. Respondent No.4 was not even

eligible for the post of lecturer when the advertisement was issued in the year 1993 and when the petitioner was appointed as lecturer on 25.6.1993. It is admitted position that the respondent No.4 passed M.A. Examination held in October, 1994 and thereafter made an application seeking promotion to the post of lecturer in junior college on 27.5.1995, by which time the petitioner was on the verge of completion of probation period. Respondent No.4 by an application dated 27.5.1995 was seeking promotion to the post held by the present petitioner solely on the ground that she happens to be a teacher working in secondary school and belonging to schedule caste category of backward class. The application moved by the respondent No.4 came up for consideration before the Managing Committee of respondent No.1-Society on 19.7.1995. The Committee noticed the fact as to when the petitioner was appointed and held that the respondent No.4 was eligible. It also noticed that the petitioner was appointed on probation and had completed probation period. The Committee then resolved that the excess workload available in the subject of English in junior college be assigned to respondent No.4 and she be paid additional allowance for engaging the excess period in junior college. The 4th respondent accepted the surplus workload in the junior college. Accordingly by a resolution dated 20.9.1995 the petitioner was confirmed in service and granted permanency. It is noted in the resolution that the work and behaviour of the petitioner is good and hence he is being confirmed. It appears that sometime in the year 1996 the Head Master had sought guidance from the Deputy Director of Education in relation to the legality of the appointment of the petitioner. The Deputy

Director on examining the backlog opined that the appointment of the petitioner on probation was wrong and the approval granted to him is also improper and as he found that the approval granted is wrong he revoked the approval. It is the case of the petitioner that the approval granted in his favour has been revoked by the Deputy Director without affording any opportunity of being heard. Be it as it may, on receipt of the communication dated 6.3.1996 from the Deputy Director of Education by the management, it issued termination order dated 8.3.1996 terminating petitioner from service on the ground that the approval for the year 1995-96 has been refused by the Deputy Director of Education. Aggrieved by the said order of termination the petitioner filed an appeal before the School Tribunal and on dismissal of the said appeal present writ petition has been filed. The School Tribunal has held that as the post of lecturer in English was advertised for a candidate belonging to schedule tribe category the management could have appointed the petitioner only for a period of one year temporarily. The School Tribunal has placed reliance on the provisions of Rule 9 sub-rule (9)(a) to hold that if a reserved category candidate is not available then the vacancy has to be filled in by appointing any other candidate temporarily for a period of one year. Proceeding on these lines the Tribunal has held that the petitioner could have been appointed only for a period of one year and the appointment of the petitioner on probation for a period of two years is contrary to the provisions contained in Rule 9(9)(a) of MEPS Rules. The learned counsel for the petitioner has placed reliance on two judgments reported in the case of (i) ***Shakuntala Ganpatsa Shirbhate*** v/s ***Industrial Weaving Cooperative***

Society & Ors., AIR 1994 SC 36 and (ii) ***Kankavali Shikshan Sanstha & Ors.*** V/s ***M.R.Gavali & Ors.***, 2006 (1) ALL MR (SC) 266. In the first judgment the Supreme Court has held that since the appellant is a member of one of the backward classes referred to in rule 9, she was entitled to regular appointment in the very first year when no person belonging to Nomadic Tribe was available. The Supreme Court has interpreted sub-rule (9)(a) so as to mean that if a backward class candidate for which category vacancy is reserved is not available then a candidate belonging to any other category of backward class mentioned in rule 9 can be appointed on the regular basis. The Supreme Court in Kankavali Shikshan Sanstha's case has followed the judgment reported in AIR 1994 SC 36. In view of law laid down by the Supreme Court it is crystal clear that the petitioner was very much entitled to regular appointment and the appointment order issued by the management dated 25.6.1993 is very much legal and proper. It may be incidentally stated that the present petitioner was protected during pendency of the appeal by grant of stay before the Tribunal and even after dismissal of the appeal the petitioner had been protected in service by interim order passed in Writ Petition as a consequence of which since the year 1993 till date the petitioner is in uninterrupted service of respondent No.1. In the result writ petition is allowed. Impugned order of termination is quashed and set aside. Judgment and order passed by School Tribunal Kolhapur in Appeal No.36/96 dated 18.9.1997 is also quashed and set aside. It is declared that the appointment of the petitioner made by order dated 25.6.1993 on probation for a period of two years is legal and proper. Rule made absolute

in above terms.